

**Council of Europe contribution for the 16th UPR session
regarding Germany**

Prevention of Torture

On 22 February 2012, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Germany, in November/December 2010, together with the response of the German authorities. Both documents are attached below.

The CPT heard no allegations of recent ill-treatment during custody in police establishments. However, a few allegations were received from detained persons (including juveniles) that they had been subjected to excessive use of force by police officers at the time of apprehension (in particular, punches and kicks). As to the continued use of four-point Fixierung (the physical fixing to a bed or mattress) of agitated and/or violent detained persons in police establishments, the Committee has recommended that the authorities put an end to this practice. In their response, the German authorities state that the practice of Fixierung in a police context has been abolished in many of the Länder, but continues to be applied in some Länder in rare, exceptional cases.

One of the objectives of the visit was to examine in detail the conditions of detention in units for immigration detainees in prisons. In this connection, the CPT was particularly concerned about the situation found at Munich-Stadelheim Prison, where immigration detainees were subjected to severe restrictions regarding visits and access to the telephone. In their response, the German authorities state that immigration detainees in Munich-Stadelheim Prison have now been granted more frequent access to the telephone and at least one visit of one hour per week. They further informed the Committee that renovation work has been carried out in the unit for male immigration detainees.

The CPT received several allegations of inter-prisoner violence (beatings, threats and extortion), mainly from juveniles at Cologne, Herford and Leipzig Prisons. The Committee noted that efforts were being made to counter this phenomenon and has invited the authorities to remain vigilant in this regard. The Committee also criticised the fact that prisoners, including juveniles, were occasionally subjected to means of physical restraint (Fixierung) for prolonged periods, and has reiterated the safeguards that should surround any application of Fixierung in the context of prisons. The Committee has also stressed that the aim should be to abandon the resort to Fixierung in non-medical settings.

Particular attention was paid to the situation of persons subject to preventive detention (Sicherungsverwahrung) at Burg, Freiburg and Schwäbisch Gmünd Prisons. The visits took place at a time when the entire system of preventive detention in Germany was undergoing a major reform, in the light of recent judgments of the European Court of Human Rights. The CPT found that the differentiation between preventive detention and prison sentences (Abstandsgebot) was not always effectively implemented and that there was a shortage of psychological care and therapeutic activities. However, the Committee has welcomed the concrete measures being taken to improve the situation, notably at Freiburg Prison; namely, the transfer of persons in preventive detention to a new building with a less carceral infrastructure, the significant increase of staff as well as newly developed special "motivation programmes" and therapeutic activities. At the Rheine Forensic Psychiatric Clinic, the CPT gained a generally favourable impression of the living conditions and treatment provided to patients.

The CPT report also notes that surgical castration is applied in a few German Länder in rare, isolated cases. The Committee makes clear its fundamental objections to the use of surgical castration as a means of treatment of sexual offenders and has recommended that it be

discontinued. In their response, the German authorities state that they are currently reviewing the matter.

A complete list of the CPT's recommendations, comments and requests for information is contained in the Appendix to the report.¹



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Fight against racism and intolerance

On 26 May 2009, the Council of Europe's European Commission against Racism and Intolerance (ECRI) released its fourth report examining racism, xenophobia, antisemitism and intolerance in Germany (attached below).²

"The ECRI report notes positive developments in Germany, but also details continuing grounds for concern", said the Chair of ECRI, Eva Smith Asmussen. The adoption of the General Equal Treatment Act (AGG) has strengthened the legal and institutional framework against racism and discrimination; there are signs of improved dialogue with the Muslim community and the authorities have begun to develop a strong new focus on integration, aiming to help migrants participate fully in German society. However, violent racist, xenophobic and antisemitic attacks continue to be reported, and support for parties expressing racist, antisemitic or revisionist views has increased. At the same time, discrimination in daily life is reported by members of the Muslim, Turkish, Black as well as Roma and Sinti communities.

The report contains findings and recommendations regarding the following issues:

- Existence and implementation of legal provisions³
- Discrimination in various fields including education, employment and housing⁴
- Racism in public discourse⁵
- Racist violence⁶
- Vulnerable/target groups, including Jewish communities, Muslims, Turkish community, Black community, Roma/Sinti communities, migrants, asylum-seekers, refugees, and other beneficiaries of international protection and persons with tolerated status⁷
- Antisemitism⁸
- Conduct of law enforcement officials⁹
- Monitoring racism and racial discrimination¹⁰

ECRI selected the following three specific recommendations for which it requests priority implementation from the authorities and which it would revisit in two years' time:¹¹

- ECRI strongly recommends that the German authorities take a more proactive role in raising awareness of the legal framework now in force against racial discrimination,

¹ pp. 61-72.

² A summary of the report can be found on pp. 7-10.

³ pp. 11-19.

⁴ pp. 20-24.

⁵ pp. 24-27.

⁶ pp. 27-30.

⁷ pp. 30-43.

⁸ pp. 43-44.

⁹ pp. 44-45.

¹⁰ pp. 45-46.

¹¹ p. 47.

notably among groups who are especially vulnerable to this phenomenon. To this end, ECRI recommends that the authorities run an awareness-raising campaign specifically targeted at ensuring that potential victims of racial discrimination are aware of the existence and scope of the General Equal Treatment Act (AGG) and of the mechanisms for invoking their rights before the courts.

- Bearing in mind that no immediate move away from the present streaming system for secondary schooling in Germany has been envisaged, ECRI recommends that the German authorities take urgent steps to implement targeted training programmes to ensure that all teachers have the capacity to assess objectively the skills of students due to enter the secondary school system, in order to ensure that students are not sent to schools in the lower academic streams unless this is strictly necessary.
- ECRI strongly recommends that, as part of their ongoing efforts towards creating a workplace free of racism, the German authorities launch an awareness-raising campaign aimed specifically at changing employers' attitudes towards persons with an immigrant background. This campaign should focus not only on employers' obligations and liabilities under the new General Equal Treatment Act (AGG) but also on the positive aspects of diversity in the workplace. It could form part of a regular series of such campaigns.



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Council of Europe Commissioner for Human Rights

On 9 December 2010, the Commissioner for Human Rights, Thomas Hammarberg, published his letter, dated 15 November 2010, addressed to the German Federal Minister of the Interior, Dr Thomas De Maizière (attached below). "The German government should avoid any further forced returns to Kosovo¹². The infrastructure and resources available there are in fact not adequate for the sustainable integration of returnees. Many of them, in particular Roma, Ashkali and Egyptian families with children, have been severely affected, not least because of discrimination, marginalisation and fear for their safety", he said. The letter followed up on meetings with representatives of the German authorities that the Commissioner had held in October 2009 in Berlin.

The Commissioner also remained seriously concerned about the lead-contaminated camps of Osterode and Leposavic, in northern Mitrovica, where some returnees from western European countries, including Germany, have ended up.

As regards the conduct of law enforcement officers, the Commissioner encouraged the German federal and regional authorities to consider the development of the existing mechanisms by introducing an independent police complaints body. He also invited the German government to provide him with more information on the measures adopted to identify individual police officers, especially when their equipment and uniform make them unidentifiable. "Public trust in the police is of paramount importance in democratic societies. Accountability and transparency of police forces are necessary conditions for such trust to exist", added the Commissioner.



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¹² "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo."

Protection of Minorities

Framework Convention for the Protection of National Minorities

On 15 June 2011, the Committee of Ministers adopted a resolution on the protection of national minorities in Germany (attached below). The resolution contains conclusions and recommendations, highlighting positive developments¹³ but also mentioning issues of concern¹⁴. Moreover, it mentions a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

In addition to the measures to be taken to implement the detailed recommendations contained in Sections I¹⁵ and II¹⁶ of the Advisory Committee's opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

Issues for immediate action:¹⁷

- intensify measures to raise public awareness of the General Equal Treatment Act, and ensure that compliance with the Act is regularly monitored; take additional measures to ensure that persons most vulnerable to discrimination be fully informed of the legal remedies available to them;
- continue resolutely to combat racism in its many dimensions and manifestations; adopt targeted measures to prevent the spread of prejudice and racist language through certain media, on the Internet, and in sports stadiums; adopt specific legislation that expressly punishes racist motivation as an aggravating factor of any offence;
- take measures to bring about a significant increase in participation in public life by the Roma and Sinti, with due regard for the cultural diversity found within these groups; promote and support projects and initiatives which will contribute to improving their participation in social and political life, and take resolute action without delay to end the unjustified placing of Roma and Sinti pupils in 'special' schools.

Further recommendations:¹⁸

- develop the use of data on the situation of persons belonging to national minorities, obtained from the national minorities themselves and from other sources, in order to better tailor measures aimed at protecting minorities to their real needs;
- pursue an open and dialogue-based approach in relations with persons belonging to groups that are currently not covered by the Framework Convention, including non-citizens, with a view to extending the protection of specific articles of the Convention to persons belonging to these groups as appropriate;
- continue the policy of support for the preservation and development of the cultural heritage of national minorities, in close liaison with the individuals concerned, and paying special attention to the long-term needs of persons belonging to national minorities;
- continue the debate, in liaison with the representatives of national minorities, on the distribution of responsibilities in the field of national minority protection policies, so that measures to preserve and promote their languages and cultures can be made more effective and more accessible;
- pay all the requisite attention to the interests of persons belonging to the Sorbian minority if new relocations of the population are considered to make way for lignite mining operations, and ensure that the individuals concerned be closely involved in decision-making processes and the preparation for such relocations;

¹³ Part 1 a) of the resolution

¹⁴ Part 1 b) of the resolution.

¹⁵ pp. 6-9 of the third Opinion of the Advisory Committee on the Framework Convention on Germany.

¹⁶ pp. 10-38 *ibid*

¹⁷ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

¹⁸ *Idem*.

- take new measures to improve the general public's awareness of the language and culture of persons belonging to national minorities, in particular outside the traditional areas of minority settlement;
- provide greater support for the development and transmission of radio and TV programmes in the national minority languages, especially by the public-service media but also through the creation of relevant incentives for private media;
- take the necessary steps to bring German legislation concerning the changes of minority names fully in conformity with Article 11 of the Framework Convention;
- take additional measures to create an environment in which use of the Sorbian, Danish and Frisian languages in dealings with local administrative authorities can be promoted more effectively;
- continue and intensify measures to increase the availability of teachers qualified to teach in the minority languages, at all levels of the educational system; continue, in close liaison with the representatives of the minorities concerned, to develop teaching of or in these languages;
- maintain the approach of encouraging persons belonging to national minorities to participate more actively in public life, through institutional arrangements provided at federal level; take steps to ensure that consultation procedures set up at regional and local level enable persons belonging to national minorities to participate effectively in public affairs.

The resolution is largely based on the corresponding Third Opinion of the Advisory Committee on the Framework Convention on Germany¹⁹. The concluding remarks, contained in Section III²⁰, serve as the basis for the Committee of Ministers' Resolution. The Opinion of the Advisory Committee and the comments on the Opinion by the government of Germany are also attached below.



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European Charter for Regional or Minority Languages

On 25 May 2011, the Council of Europe Committee of Ministers made public the fourth report on the application of the European Charter for Regional or Minority Languages by Germany. The report drawn up by a committee of independent experts, which monitors the application of the Charter, is contained in the attachment below. It includes the Committee of Ministers' Recommendation on the application of the European Charter for Regional or Minority Languages by Germany.

On the basis of the report, the Committee of Ministers calls on Germany to adopt specific legislation to ensure that the Charter is actually implemented in practice. Urgent measures are needed to promote and preserve North Frisian, Sater Frisian and Lower Sorbian, which are deemed to be particularly endangered languages, and in particular to ensure that primary and secondary education is systematically available in these languages. Measures are also needed to ensure that radio and television broadcasting is available in these languages, as well as in Danish, Low German and Romani.

Germany is also encouraged to take measures to ensure that the provision of education in Danish and Upper Sorbian is not jeopardized by reductions in subsidies for Danish-language private schools or changes in the educational system concerning the Upper Sorbian language. More teaching hours should be devoted to Low German, and it should be taught as a regular school subject and as an integral part of the curriculum in the Länder concerned. In general,

¹⁹ A summary of the report can be found on pp. 2-3.

²⁰ pp. 39-42.

Germany is encouraged to ensure that an effective mechanism exists to monitor education in the regional or minority languages.

Finally, the Committee of Ministers calls on Germany to take resolute action to make it possible to use regional or minority languages in dealings with the administration and in courts.



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Social and economic rights

Germany ratified the European Social Charter on 27/01/1965 and accepted 67 of the Charter's 72 paragraphs.

It has signed the Revised European Social Charter on 29/06/2007 but has not yet ratified it.

It has signed but not ratified the Additional Protocol to the European Social Charter.

It has neither signed nor ratified the Amending Protocol to the European Social Charter and the Additional Protocol providing for a system of collective complaints.

Cases of non-compliance

Thematic Group 1 "Employment, training and equal opportunities"

► Article 18§3 – Right to engage in a gainful occupation in the territory of other States Parties
- Liberalising regulations
Foreign workers are dependent on one specific employer: if they lose their jobs their rights of residence can be curtailed and they can be prevented from seeking new employment
(Conclusions XIX-1, p. 17)

Thematic Group 2 "Health, social security and social protection"

► Article 3§1 – Right to safe and healthy working conditions - Safety and health regulations
Certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.
(Conclusions XIX-2, p. 6)

► Article 12§4 – Right to social security - Social security of persons moving between states
Accumulation of insurance or employment periods completed by nationals of States Parties not covered by Community regulations or by bilateral agreements is not guaranteed.
(Conclusions XIX-2, p. 23)

► Article 13§3 – Right to social and medical assistance - Prevention, abolition or alleviation of need
Nationals of other States Parties to the Charter and the revised Charter are not granted the same social assistance benefits as Germans.
(Conclusions XIX-2, p. 27)

► Article 13§4 – Right to social and medical assistance – Specific emergency assistance for non-residents
It has not been established that all persons, without resources, unlawfully present in Germany may be granted emergency medical and social assistance.

(Conclusions XIX-2, p. 28)

Thematic Group 3 "Labour rights"

► Article 2§1 – Right to just conditions of work - Reasonable working time
Certain reference periods for averaging working hours under flexible working arrangements are too long.

(Conclusions XIX-3, p. 5)

► Article 2§5 – Right to just conditions of work – Weekly rest period
The time in which a weekly rest day is granted may exceed twelve successive working days.

(Conclusions XIX-3, p. 7)

► Article 4§1 – Right to a fair remuneration - Decent remuneration

The lowest wage paid is not fair

(Conclusions XIX-3, p. 8)

► Article 4§3 – Right to a fair remuneration - Non-discrimination between women and men workers with respect to remuneration

The compensation payable as an alternative to continued employment in case of dismissal as a reprisal is limited.

(Conclusions XIX-3, p. 11)

► Article 6§4 - Right to bargain collectively – Collective action

1. Strikes not aimed at achieving a collective agreement are prohibited.

2. The requirements to be met by a group of workers in order to form a trade union satisfying the conditions for calling a strike constitute an excessive restriction to the right to strike.

(Conclusions XIX-3, p. 14)

Thematic Group 4 "Children, families, migrants"

► Article 7§5– Right of children and young persons to protection – Fair pay

The allowance paid to apprentices is inadequate.

(Conclusions XIX-4 (2011), p. 5)

► Article 16 - Right of the family to social, legal and economic protection

Equal treatment is not guaranteed to nationals of other States Parties to the 1961 Charter and the Charter in respect of the granting of supplementary child-raising allowances in Bavaria.

(Conclusions XIX-4 (2011), p. 13)

► Articles 19§6 and 19§10 – Right of migrant workers and their families to protection and assistance – Family reunion; - Equal treatment for the self-employed the requirement for foreign nationals wishing to be joined by their spouses to have a permanent residence permit - which is granted provided that the foreigner concerned has held a temporary residence permit for five years - or to have had a temporary residence permit for at least two years, is excessive; requiring applicants for family reunion to produce documentary evidence of their knowledge of German is likely to hinder family reunion rather than facilitate it; excluding social welfare benefits from the calculation of migrant worker's income is likely to hinder family reunion rather than facilitate it.

(Conclusions XIX-4 (2011), pp. 22 and 25)

► Articles 19§8 and 19§10 – Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation; - Equal treatment for the self-employed
Migrant workers and their families (not EU citizens) may be expelled for having recourse to social welfare or for being homeless or for substance abuse.

(Conclusions XIX-4 (2011), pp. 24 and 25)

Please see attached below the Conclusions regarding Germany from 2008, 2009, 2010 and 2011, as well as the fact sheet.



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Action against Trafficking in Human Beings and Preventing and Combating Violence against Women and Domestic Violence

Germany has signed but not yet ratified the Council of Europe Convention on Action against Trafficking in Human Beings. Thus the country is not yet covered by the monitoring carried out by the Group of Experts on Action against Trafficking in Human Beings (GRETA).

Germany has signed but not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it is not yet concerned by the monitoring procedure which will be carried out by a Group of experts on action against violence against women and domestic violence (GREVIO) once the convention enters into force.

Execution of judgments and decisions at the European Court of Human Rights

On 31 December 2011, there were 88 cases pending before the Committee of Ministers (CM) for supervision of their execution, 14 of these cases were “leading cases”, i.e. raising a new structural/general problem and requiring the adoption of general measures, the other cases being “repetitive cases” (including a number of friendly settlements) concerning issues already raised before the European Court of Human Rights.

10 cases or groups of cases are currently examined under the enhanced supervision procedure which is reserved in particular to cases raising important or complex structural problems or requiring urgent individual measures.

The main one revealing such structural problems concerns unjustified extension of preventive detention; breach of the prohibition of retroactive application of criminal law – case of *M. v. Germany* (group of 10 cases) (application No. 19359/04).

The document attached presents a brief description of the violations and the last detailed decision taken by the Committee of Ministers.



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